

**Original citation:**

Mills, Chris. (2013) Why nudges matter : a reply to Goodwin. Politics, 33 (1). pp. 28-36.

**Permanent WRAP URL:**

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## **Why Nudges Matter: A Reply to Goodwin**

*Politics* 33, no. 1 (2013): 28-36

### **Abstract**

This article argues that, contrary to Goodwin's recent arguments, nudges are compatible with the coalition government's stated aspiration to further self-empowerment. This is because, despite its libertarian roots, nudging is compatible with the promotion of personal autonomy and thus can be used to promote self-empowerment in a non-paternalistic fashion. Further, I argue that nudging may play a valid role in tackling large-scale social problems in tandem with other traditional policy measures. Consequently, Goodwin is wrong to reject choice architecture for these reasons.

**Keywords:** Nudging; Manipulation; Libertarianism; Autonomy; Paternalism

### **Introduction**

In a recent article in these pages, Tom Goodwin (2012) proposes three reasons why we might reject the libertarian paternalism proposed by Richard Thaler and Cass Sunstein in their book *Nudge* (2008). He argues that the use of 'nudges' ought to be rejected as their use would contravene the stated current UK government's aspirations to promote empowerment, freedom and fairness. What is more, Goodwin insists that even if this were not the case, nudging is not an efficacious way of solving society's big problems. To support his claims Goodwin posits that: (a) the concept of freedom that choice architects reference is overly narrow and is thus poorly equipped to empower citizens; (b) nudging may be paternalistic, and to the extent that it is we should be worried; and (c) nudging may be ineffective as a strategy to tackle some of society's major ills. He concludes that deliberative approaches to democracy may be a better avenue for empowering citizens and strengthening society, and he invites further discussion and investigation into some of the topics he raises.

In this article I take up his challenge and respond to three points. The first concerns the role the concept of freedom plays in nudging and how it affects nudging's potential for empowerment. I argue that Goodwin misunderstands a key feature of nudging and thus underestimates its capacity for empowerment. My second point of reply relates to the paternalistic tendency of nudging. I argue that Goodwin has an overly simplistic view of the relationship between paternalism, manipulation and autonomy, and thus mistakenly condemns cases of non-paternalistic interference as morally problematic. Finally I conclude that Goodwin is correct in his belief that nudges are not always effective at changing either deeply ingrained behaviour or large-scale behaviour patterns. However, the reasons he provides are mistaken, arising from his failure to grasp a more crucial problem regarding the effectiveness of nudging. I argue that a greater understanding of the construction of social and moral norms will aid policymakers in tackling the larger problems facing modern society, and I briefly sketch the small role that nudges can play in designing such policies.

## **1. Libertarianism, Freedom and Empowerment**

One of Goodwin's main contentions is that the claim that nudges preserve freedom (because they preserve or improve choice) is a hollow claim due to the narrow definition of freedom used by libertarians. Because libertarians tend to be interested in *negative* freedom, to employ Isaiah Berlin's (1969) famous labels (or freedom from obstacles to or external restrictions on our actions), they are poorly equipped to recognise other potential barriers to our liberty. Goodwin argues that alongside these traditional restrictions on freedom, the process of self-realisation and overcoming *internal* obstacles to action (e.g. addictions, phobias, aversion and prejudices) may also be important. Such a view is commonly termed a *positive* conception of liberty, and Goodwin believes that the inability of nudging to consider or accommodate this range of important factors restricts its ability to foster a suitably thick notion of empowerment. We may have grounds for questioning the accuracy of Berlin's account (Swift, 2006, pp. 51–90), but aside from this Goodwin's point is largely correct. We have good reason to believe that

the aspects involved in a positive conception of liberty will help foster self-empowerment. However, it is not obvious that Goodwin's claim applies to Thaler and Sunstein's project.

It is not clear to what extent Thaler and Sunstein's view is exclusively concerned with a negative conception of freedom. If, as Goodwin appears to believe, nudges were simply designed to protect choices by removing external obstacles to us making those choices, then nudges would be designed to maximise the number of options that the individual faces. Crucially this process would be silent about the type or quality of the options available; it would merely focus on the quantity of options. Why might this be important? Consider a situation where you face an option set consisting of 15 different flavours of ice cream and you are asked whether you would prefer the addition of yet another flavour rather than a different form of dessert. The difference between the quantity and quality of choice becomes clear in this simple example. The commonly held intuition is that the 16th flavour of ice cream is less valuable than the different form of dessert. This intuition is relevant to Goodwin's concern because Thaler and Sunstein are not silent on the content of the choice architecture that they recommend. The authors argue that it is legitimate for choice architects to try to 'influence choices in a way that will make choosers better off, *as judged by themselves*' (Thaler and Sunstein, 2008, pp. 5–6, emphasis in original). Combined with low opt-out costs (the libertarian requirement of nudging), it appears that nudging is designed to further an individual's ability to act as they themselves would like, or certainly in ways that they would not disagree with. It is these characteristics that distinguish nudging from other common (non-)regulatory or (non-)fiscal interventions designed to affect individual choice. Nudges are intended to allow individuals to overcome the various biases and blunders (Thaler and Sunstein, 2008, pp. 19–41) that affect our everyday behaviour in order to lead an authentic life. Further, Thaler and Sunstein explicitly consider the ways in which various nudges may help us resist temptations (Thaler and Sunstein, 2008, pp. 43–56). Biases, blunders and temptations are a core concern of positive conceptions of liberty because they can prevent authentic decision-making. Consequently in such cases, Goodwin's claim misses its mark.

The difficulty facing proponents of nudging (and presumably one of the motivating concerns behind Goodwin's argument) is that this approach works more effectively in situations where the individual struggles to understand the situation (and thus may require prompting through complex decisions that require lots of technical knowledge or rely on probability judgements that the individual feels poorly equipped to make). In these situations it may be unclear what the individual's preferred judgement might be, given that the subject of the nudge may struggle to consider the potential impact of their choices. Thaler and Sunstein are the first to admit that 'people are most likely to need nudges for decisions that are difficult, complex, and infrequent, and when they have poor feedback and few opportunities for learning' (Thaler and Sunstein, 2008, p. 247). Situations where nudging might be most effective then turn out to be situations where it is most difficult for the subject of the nudge (the nudgee) to consider whether the intervention has benefited them as they themselves would like. Thaler and Sunstein recognise this, and this worry motivates their call for nudges to be subject to rigorous monitoring and a drive for transparency, and ... to have an obvious opt-out option available. With this 'safety net' in place, the proponents of nudging hope that some of the intuitions behind Goodwin's first worry will be calmed.

It is important to note that the solution to the problem of empowerment lies in the choice architect's ability to track either the nudgee's own wishes or their rational wants (those things that it would be irrational to deny, e.g. healthier living, a better work-life balance, more information regarding complex decisions, etc). If this is the case, then the important question is how nudges relate to the personal autonomy of the nudgee. If decision-making scenarios can be designed to protect authentic choices – those that the nudgee would want to make – then they are at least consistent with empowerment. And to the extent that they allow the individual to pursue their authentic goals, helping them to overcome various cognitive biases and other sources of weakness of will, then they may indeed promote self-empowerment. Thus the answer to Goodwin's first worry will hinge on how libertarians relate to paternalism and personal autonomy. For nudges to be useful in pursuing the UK government's plans for empowering citizens, then the libertarian foundations of nudging (how the concept of freedom is interpreted and informs the concept) must be compatible with the concept of personal autonomy (a concept central

to the idea of self-empowerment as Goodwin defines it). It is to this relationship that I now turn.

## **2. Libertarianism and Autonomy**

Personal autonomy is a strongly contested concept in moral and political thought. Both its content (Taylor, 2005) and the role that it should play in politics (Christman and Anderson, 2005) are hotly debated. It suffices for the purpose of this short response to claim that personal autonomy is based around the individual's capacity for self-control, reflective authenticity (Dworkin, 1988, pp. 3–33) and their independence from coercive or manipulative influences (Raz, 1986, pp. 369–429). Various claims have been made regarding both autonomy's intrinsic value (Hurka, 1987; Wall, 1998, pp. 127–204) and instrumental value in promoting the wellbeing of citizens (Raz, 1986, pp. 369–429; Wall, 1998, pp. 127–204). For our purposes it appears clear that furthering an individual's self-control and ability to reflect authentically on their life plans, free from various manipulative or coercive pressures, will play a core part of policies designed to increase *self-empowerment*.

Goodwin correctly identifies that libertarians have a poor history of taking into account the concerns of positive liberty. Part of this difficulty comes from the complex conceptual relationship between freedom and autonomy (Colburn, 2010, pp. 70–77). But specifically this problem arises because libertarians deny many of the claims made by those who argue for the value of personal autonomy, choosing to value negative liberty instead. Indeed we may have reason to doubt the libertarian's capacity to take into account any form of autonomy (Cohen, 1995, pp. 210–213, 238–243), contrary to Robert Nozick's well-known arguments that the two concepts are compatible within a libertarian framework (Nozick, 1974, pp. 28–33). This is because libertarians ground their arguments in Lockean arguments of natural rights and self-ownership (Locke, 1980 [1698]) rather than Kantian arguments of respect for autonomy (Kant, 1998 [1785]). Michael Otsuka has convincingly argued that the former is in fact morally prior to the

latter for libertarians (Otsuka, 2005, pp. 1–6); thus libertarianism is poorly equipped to deal with claims regarding moral or personal autonomy.

Yet it is not clear how much Thaler and Sunstein share these moral foundations, or whether nudges are bound to them. If self-ownership is the reason why Thaler and Sunstein want to preserve choices, it is not obvious. Even if it were, it matters little which is considered morally prior so long as principles of self-ownership and respect for autonomy result in compatible conclusions. I believe that they do. As discussed above, the decision-making situation can be designed to protect authentic choices so that it contains options that the individual would choose in a situation free from obstacles (either internal or external). If Thaler and Sunstein use nudges in order to ensure free choices and their value (Scanlon, 2000, pp. 251–256), then this is entirely compatible with the belief that an authentic will requires free choices to be authentic. An organisation attempting to promote self-empowerment, individual independence and self-fulfilment might therefore choose to employ nudging with the latter justification. So long as the method of nudging employed is not in tension with authenticity or competency (the grounds for autonomy), then it appears that nudging may be employed to promote self-empowerment.

Goodwin identifies two sources of this tension between the aim of a nudge and the method it employs to achieve its stated aim. The first relates to the impoverished conception of freedom. I hope to have shown that choice architecture need not be hopelessly bound to the traditional libertarian preference for negative liberty to which Goodwin objects. However, my argument in favour of nudging is incomplete if it merely shows that the justification for nudging may be compatible with self-empowerment. A second source of tension still requires a solution. If nudging is found to be paternalistic or manipulative, then the compatibility of its justification with the promotion of personal autonomy will be problematic, given that the implementation of a nudge will be at odds with its stated aim. If this is the case, nudging would be self-defeating in attempting to empower ordinary citizens. The proponent of nudging thus also needs to show that the process itself does not undermine personal autonomy.

### 3. Libertarianism and Paternalism

I suspect that the tension between self-ownership and respect for autonomy identified in the previous section is the reason why (even after an explicit denial from Thaler and Sunstein (2003)) it is commonly thought that a combination of libertarianism and paternalism is at least unstable or contradictory (Wall, 2009), if not an outright oxymoron. This is because paternalism is commonly thought to be a problem arising from an intervention by one person to substitute the judgement of the other regarding their pursuit of their own good (Quong, 2011 pp. 73–83; Shiffrin, 2000). Thus the answer to Goodwin's worry regarding paternalism is necessarily connected to his worry regarding empowerment. If nudging as a method of prompting choices undermines the autonomy of an individual (because it is paternalistic), then regardless of the reasons we employ to justify the nudge, the act itself will fail to be empowering.

Part of the difficulty in answering this question is that there are a wide range of policies recommended under the umbrella of nudging, which forms a subsection of an even larger group of general behaviour-changing interventions. The best known survey of nudging and its impact on personal autonomy is provided by Daniel M. Hausman and Brynn Welch (2010), who argue that the forms of influence proposed by Thaler and Sunstein 'are in many cases not paternalistic at all, but instead largely cases of rational persuasion' (Hausman and Welch, 2010, p. 136). Rational persuasion and paternalistic interferences are opposed because they treat the authentic will (or the individual's ability to decide true to themselves) in opposing fashions. Paternalistic interferences attempt to subvert or override the agent's authentic will, making decisions regarding their own well-being for them. A classic example of a paternalistic act is the forced blood transfusion for a Jehovah's Witness patient, as such acts are performed against the express consent of the patient for their own good. Clearly contrasted with such behaviour is rational persuasion. Such acts respect the rational will or status of the individual as an autonomous agent, supplying the individual with reasons why they should agree without attempting to distort the individual's ability to decide authentically on the evidence provided. The



provision of additional information or appeals to emotion are simple examples of this form of interaction. These actions respect the personal autonomy of the individual and thus cannot be paternalistic.

As a broad umbrella of interferences, nudges straddle this important boundary. Hausman and Welch argue that certain cases of nudging will be paternalistic because they ‘push people to make choices that are good for themselves by taking advantage of imperfections in human decision-making abilities’ (Hausman and Welch, 2010, p. 124). Such acts are problematic because they override or circumvent the autonomous agent’s rational decision-making capacities, thus failing to respect their status as an autonomous agent. This form of nudging will be a paternalistic form of manipulation and morally problematic, requiring a burden of justification on those who intend to employ them. As a way of example, it appears that framing effects may cause this form of concern. The thought here is simple: ‘choices depend, in part, on the way in which problems are stated’ (Thaler and Sunstein, 2008, p. 40). Framing effects function in part due to their covert nature. Consider the well-known example of the framing of the option of surgery. Explaining the option in terms of its success rate increases the acceptance of surgery when compared to explaining the option in terms of its mortality rate. Because of this covert nature, our ability to ensure that our decisions are authentic is undermined precisely because we are unsure to what extent our thoughts are affected by framing (Hanna, 2011). The unconscious nature of these influences raises the concern of paternalism. But not all forms of nudging do this. Some actively work to ensure that paternalism does not occur (e.g. those that function by prompting you to consider a wider set of information relevant to a problem), whereas others seem to be simply benign in this regard. Consider the ‘cool-down periods’ now commonly enforced on contracts. Thus I argue that Goodwin is too quick to reject such benign acts as morally problematic, at least on the grounds of paternalism.

#### **4. The Prospects for Social Transformation**

Certain forms of nudging respect personal autonomy and escape Goodwin's main concerns. They can be employed to empower individuals in line with their own plans and they do so without contravening the autonomous decision-making process. This does not apply to all forms of nudging, and to that extent Goodwin's concerns are valid. But my response is aimed to show how and why his major claims do not apply to all forms of nudging. I have argued that nudges can be a valuable part of a government's set of policies to ensure empowerment without being paternalistic. By protecting our capacity to choose and furthering the authenticity of our choices, nudging appears to be a valid candidate in the government's drive for empowering citizens.

Does this mean that we have no reason to be doubtful of nudging? I would like to conclude by arguing that we should *accept* a reason Goodwin provides in favour of rejecting nudges, that of nudging's weak ability to be genuinely transformative. Goodwin asserts that 'nudging is unable to deliver the kind of substantive changes that are needed to tackle the big problems that society faces' (Goodwin, 2012, pp. 89–90). I think this is true but not for the reasons Goodwin posits. He argues that nudges overemphasise individual preferences and rely on an atomistic approach to social structure. Because of this, nudges will fail to move people to think and deliberate together, and act in concert to solve large-scale problems.

We may have reason to doubt Goodwin's claim, given that Thaler and Sunstein repeatedly call for a publicity condition to be built in and for a drive for transparency to be pursued. Nudges are controversial enough to motivate people to discuss their benefits and costs. This is useful as it can inform a feedback loop, providing further information for their architects to rework nudges that are failing to bring about the desired outcome. But even if we should accept Goodwin's claim, I argue that he has failed to identify the real problem. The *true* failure of nudging in this regard is that it is often so benign that it will fail to be genuinely transforming because it cannot establish original (or significantly alter existing) moral or social norms (Elster, 2007, pp. 104–107). Nudges can alter the behaviour of individuals to coincide with those who accept certain norms, but it cannot provide the reasons necessary to alter people's behaviour in the long run. Thus, on their own, successful nudges merely lead people to act *as if* they accepted the norm, without

attempting to engage with the individual at that deeper level that Goodwin may have in mind. Further, nudging appears poorly equipped on its own to consider the complexities of social transformation and group dynamics required to tackle large-scale problems. The reproduction of norms is particularly troubling for the approach given that it has been criticised for potentially slowing social learning by reducing personal responsibility and the likelihood of error in citizens' decision-making. If we are to reject nudging as an entire project for any reason, it might be that it is not particularly effective in the long run.

However this seems like a poor reason to reject something entirely. Instead it seems like a reason to use some of its parts, some of the time in tandem with other insights on the interplay between moral and social rules (Gaus, 2011). As sociologist Elizabeth Shove highlights, government activity to alter behaviour suffers because it relies on a simplified analysis that misrepresents the complex picture of large social change. Shove contends that values may not be the drivers of individual behaviour that constitute norms but the resulting consequence of the social environment (Shove, 2010). Although analysis of individual action is contested (Bratman, 2007; Mele, 2003; Raz, 1978) and subject to ongoing debate, the call for a more nuanced and holistic understanding is likely to be beneficial. Indeed this was the conclusion of the 2001 House of Lords report into behaviour change (HOL STSC, 2011, pp. 33–34) which expresses doubts regarding the effectiveness of non-regulatory measures on their own.

This point is important for assessing the current government position on large-scale societal problems such as gambling (DCMS, 2001), sustainability (DEFRA, 2008), infrastructure policy (DfT, 2007) and health (DH, 2004), and suggesting further opportunities for progressive state intervention. Consider health care and the difficult subject of organ donation. The change from opt-in to opt-out systems has long been considered an effective method of increasing organ donor numbers but has been the subject of a long-running ethical debate (Saunders, 2012). The role nudging can play on its own is, however, debatable (ODT, 2008). Given that changing public behaviour towards organ donation to increase donor numbers is a current strategic objective of the Organ Donation Taskforce (NHS, 2012, p. 11), it seems advisable that a broad range of policy methods should be employed. Indeed this is also the conclusion of the Behavioural

Insights Team (Cabinet Office, 2010, pp. 10–11). It appears that nudges have some valid role to play in solving large-scale issues but only in tandem with other policy options. Thus it seems misguided to reject something potentially useful on these grounds.

## **5. Conclusion**

In this short response piece I have not had the space to engage with some of Goodwin's other claims. Specifically I have not commented on his belief in the superiority of deliberative democracy, which I agree may constitute a reason to prefer it over nudging. But deliberative democracy is far harder to implement than a policy of nudges and what is more, they need not be mutually exclusive. Where Goodwin and I are in complete agreement is that wider, more in-depth treatment (Rebanato, 2012) of these issues would be beneficial to policymakers and political theorists alike. It is hoped that this response helps begin this process.

**Word Count: 3,723.**

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